EX PARTE SIMONS, PETITIONER.

PETITION FOR WRIT OF MANDAMUS.

No. 26, Original. Argued December 10, 1917.—Rule absolute June 3, 1918.

Plaintiff brought an action for damages in two counts against executors, in the District Court in New York, the first count alleging a promise of the testatrix to bequeath a certain sum in return for plaintiff's services, and the second her promise to pay their reasonable value. On motion the first count was ordered transferred to the equity docket, upon the ground that by the law of New York it could not be entertained at law. *Held*, that this was an error, depriving plaintiff of the right of trial by jury, and properly rectified by mandamus. Rule absolute.

The case is stated in the opinion.

Mr. Roger Foster for petitioner:

Whenever a constitutional right has been denied, or a judge has acted clearly beyond his jurisdiction, and there is no immediate remedy by a writ of error or appeal,